

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)
)
PUBLIC UTILITIES COMMISSION)
)
Instituting a Proceeding to)
Establish and Implement an)
On-Bill Financing Program)
_____)

DOCKET NO. 2014-0129

ORDER NO. **33715**

SUSPENDING THE ESTABLISHMENT AND IMPLEMENTATION OF
AN ON-BILL FINANCING PROGRAM

PUBLIC UTILITIES
COMMISSION

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SUSPENDING THE ESTABLISHMENT AND IMPLEMENTATION OF
AN ON-BILL FINANCING PROGRAM

By this Order, the commission informs the Parties that the commission is suspending the establishment and implementation of the on-bill financing program, known as the "Hawaii Energy Bill Saver Program" ("Program").¹

I.

Background

Hawaii Revised Statutes ("HRS") § 269-125, directed the commission to investigate an on-bill financing program for electric utility customers to purchase or otherwise acquire a renewable energy system or energy-efficient device through an assessment on the customer's electricity bill. After conducting

¹Also to be known as the "Hawaii Energy Bill Saver Program".

its investigation, the commission was authorized to implement such a financing program if the commission determined that such a financing program would be viable.²

On August 15, 2011, the commission began its investigation to determine the viability of an on-bill financing program by opening an investigatory docket.³ To ensure a thorough investigation, the commission granted docket party status to Hawaiian Electric Company, Inc. ("HECO"), Hawaii Electric Light Company, Inc. ("HELCO"), Maui Electric Company, Limited ("MECO") (collectively, the "HECO Companies"), Blue Planet Foundation, Hawaii Energy, the Division of Commerce and Consumer Affairs ("Consumer Advocate"), Hawaii Renewable Energy Alliance, Hawaii Solar Energy Association, Department of Business, Economic Development, and Tourism ("DBEDT"), Sierra Club, and SolarCity. Honeywell International, Inc., was granted participant status. Harcourt Brown & Carey ("Harcourt") served as the commission's consultant. Over approximately the next year and a half, these parties assisted the commission in determining

²See HRS § 269-125(c).

³See In the Matter of PUBLIC UTILITIES COMMISSION Instituting a Proceeding to Investigate the Implementation of On-Bill Financing, Docket No. 2011-0186, "Order Initiating Investigation," filed August 15, 2011.

whether an on-bill financing program, as contemplated under HRS § 269-125, could be viable in the State of Hawaii ("State").

On February 1, 2013, the commission issued an order which, among other things: (1) found that a properly designed on-bill financing program for all electric utility customers in the State could be viable, contingent upon the details of the on-bill financing program design; (2) specified parameters of the program components necessary for a viable on-bill financing program; and (3) established an on-bill financing working group ("Working Group") to continue discussions and development of an on-bill financing program.⁴

A.

Need For a Finance Program Administrator and Low-cost Capital

One of the details identified by the commission as being necessary for a viable on-bill financing program was the acquisition of "a financing program administrator obtained through a competitive procurement process."⁵ The commission recognized the importance of the Finance Program Administrator, stating that "the success of the on-bill financing program is predicated on the

⁴See Docket No. 2011-0186, "Decision and Order No. 30974," filed February 1, 2013, at 1 ("Order No. 30974").

⁵Order No. 30974 at 33.

success of the financing program obtaining reasonably low-cost money and the details of the financing [are] a necessary part of obtaining the low-cost capital."⁶ This low-cost capital would need to be used to leverage public benefit funds in order to provide the necessary capital to fund such a major on-bill financing program, as public benefit funds alone would be inadequate.⁷ In addition, the commission concluded that the Finance Program Administrator would be critical in determining what type of ownership structure would be most effective for the renewable energy systems or energy efficient devices financed under the on-bill financing program.⁸

The Working Group referenced above included the parties and participant in Docket No. 2011-0186, as well as the following additional members: Hawaii Association of Realtors, U.S. Department of Energy, The Cadmus Group, Inc., County of Kauai, Environmental Defense Fund, Renewable Funding, Ulupono Initiative, Division of Financial Institutions, Department of Commerce and Consumer Affairs, KFG Properties, Johnson Controls, Inc.,

⁶Order No. 30974 at 34.

⁷See Docket No. 2011-0186, "On-Bill Financing in Hawaii," report prepared by Harcourt, Brown & Carey, issued January 4, 2013 ("Harcourt Report"), at 20 (filed in docket under commission cover letter also dated January 4, 2013); and Order No. 30974 at 34-35.

⁸See Order No. 30974 at 34.

Cades Schutte LLP, and Bays Lung Rose & Holma.⁹ The Working Group was tasked, in part, with developing the additional details of the on-bill financing program and offering recommendations on how to design and conduct a request for proposals ("RFP") to obtain a Finance Program Administrator.¹⁰

After consulting with the Working Group, the commission issued an RFP on September 30, 2013, to find a Finance Program Administrator for the on-bill financing program. Among other things, Harcourt found that "[b]ased on discussions with a number of potential investors, we expect that several types of entities and structures would submit a response to an RFP."¹¹ Despite the professional opinion of Harcourt, only a very small number of entities responded to the RFP for a Finance Program Administrator. As a result, the commission contracted with AFC First Financial ("AFC") to be the Finance Program Administrator.

⁹By letter dated March 25, 2013, filed in Docket No. 2011-0186, the commission invited a number of entities (in addition to the parties and the participant) to participate in the Working Group. Of those invited, only First Hawaiian Bank and Hawaii State Federal Credit Union declined to participate. Two additional members were added to the Working Group on April 2, 2013 (Cades Schutte LLP), and April 5, 2013 (Bays Lung Rose & Holma).

¹⁰See Order No. 30974 at 34 and 42.

¹¹Harcourt Report at 23.

In an attempt to obtain the essential low-cost private funds to be leveraged with the public benefits funds, AFC, in its role as the Finance Program Administrator, solicited private investors in May of 2014. However, AFC was only able to secure the interest of a very small number of potential investors.

For the next ten (10) months, AFC worked with the small number of investors to finalize all necessary agreements. Nonetheless, the negotiations to finalize the necessary agreements were unsuccessful due to, among other things, an inability of the investors to fully utilize the associated tax credits or fulfill their investor role as recommended by Harcourt and agreed upon by the Working Group.

In the meantime, the commission continued its efforts to design and implement the on-bill financing program. On June 3, 2014, the commission opened this Docket by issuing Order No. 32114 entitled "Opening Docket to Establish and Implement an On-Bill Financing Program."¹² This Docket was designed, in part, as a repository "for all of the documentation necessary to establish and implement the Program[,]" including the Program Manual.¹³

¹²See Order No. 32114, "Opening Docket to Establish and Implement an On-bill Financing Program," filed June 3, 2014 ("Order No. 32114").

¹³Order No. 32114 at 7.

The commission issued a draft Program Manual on November 14, 2014. After issuance of the draft Program Manual, the docket parties were invited to attend an informal technical conference on November 19, 2014, to discuss the draft Program Manual. Thereafter, the parties were given an opportunity to submit written comments on the draft Program Manual. On November 26, 2014, comments were received from the Consumer Advocate, the HECO Companies, DBEDT, Hawaii Solar Energy Association, Blue Planet Foundation, Environmental Defense Fund, Sierra Club of Hawaii, and Hawaii Renewable Energy Alliance.

After reviewing all of the submitted comments, the commission issued the final Program Manual ("Final Program Manual") on January 9, 2015.¹⁴ The Program Manual was designed to provide an overall description of the Hawaii Energy Bill Saver Program ("Program") (formerly known as the on-bill financing program) and a description of the roles and responsibilities of the various entities involved in executing the Program.

¹⁴See Letter from Commission, dated January 9, 2015 ("Final Program Manual").

The Program Manual described the critical and essential role of the Finance Program Administrator as follows:

The Finance Program Administrator is responsible for the financial aspects and processes of the Program, as well as to provide oversight of the Program's Funding Sources. The FPA's main responsibilities include capital assembly and management, determination of applicant eligibility, calculation of the On-Bill Obligation and monthly Program Charge, servicing of the monthly Program Charge, handling transferability and end of term issues, and customer inquiry referrals regarding the monthly Program Charges, because all calls will be initially be answered through the PA and routed to FPA when applicable.

The FPA is expected to identify, and must comply with, all applicable federal, state, and county laws, ordinances, codes, rules, and regulations that affect the services provided by the FPA. This includes all applicable banking, consumer and commercial lending, financing, credit, truth-in-lending laws, and regulations. The FPA is also expected to provide assistance to other Program Entities as necessary regarding applicable restrictions, regulations, and laws. Nothing in this Program Manual shall relieve the FPA from any obligation by law to make disclosures or to provide periodic statements or other information with respect to the On-Bill Obligation.¹⁵

In October of 2015, AFC informed the commission that it had been acquired by another company named RenewFinancial, and that RenewFinancial and AFC had no interest in continuing to

¹⁵Final Program Manual at 4-5.

fulfill the role of Finance Program Administrator after the contract end date of December 31, 2015. After a number of discussions, RenewFinancial agreed to assist the commission until a new Finance Program Administrator could be found.

In December of 2015, the commission issued a limited RFP for a replacement Finance Program Administrator. As was the case with the initial RFP, a very small number of entities responded. After reviewing the responses, the commission determined that there was no viable Finance Program Administrator that met the commission's needs in the current Program structure.

B.

Bill Neutrality

Harcourt recommended that the Program limit the types of measures eligible for financing. Specifically, the report stated that "[e]ligible projects must achieve 'bill neutrality' defined as the energy savings exceeding the project costs when financed over 12 years."¹⁶ Harcourt projected that such a requirement "should produce high-performing financial assets because it actually reduces household operating costs, unlike, for instance, financing to purchase a television or a vacation."¹⁷

¹⁶Harcourt Report at 2.

¹⁷Harcourt Report at 9.

After numerous discussions with the Working Group, the commission concluded that "bill neutrality is essential to the viability of an on-bill financing program to provide realizable savings for the program participants."¹⁸ The commission stopped short of requiring a specific percentage of savings, but stated that "[t]he calculation of bill neutrality shall be based on the reasonable life of the equipment with a not-to-exceed maximum of 12 years and the payment calculation based on the price of equipment and electricity at the time of program enrollment."¹⁹

Within that calculation, the commission noted that electricity costs were a critical factor. The commission stated that it recognized that electricity costs can fluctuate, and that "in purchasing any energy efficiency or renewable energy generation device, the customer must make a determination of the cost effectiveness of their purchase and be willing to take some risk should energy prices decline."²⁰ To help ensure savings for participants, the commission required that "[t]he level of savings, when calculated according to the terms specified herein,

¹⁸Order No. 30974 at 29.

¹⁹Order No. 30974 at 30.

²⁰Order No. 30974 at 30.

must be beyond 'bill neutral' in order to encourage on-bill program adoption"21

As recognized by the commission, the cost of electricity did, in fact, fluctuate greatly during development of the Program. In June of 2014, when the commission issued Order No. 32114 to establish and implement the Program, the price of a barrel of oil was \$105.79 and the HECO Companies' schedule "R" average cost per kilowatt hour was 36.95 cents.²² However, in January of 2016, when the commission was seeking a replacement Finance Program Administrator, the price of a barrel of oil had decreased approximately 70% to \$31.68, and the HECO Companies' schedule "R" average cost per kilowatt hour had decreased approximately 35% to 24 cents.²³ This drastic drop in oil and electricity costs, coupled with the basic costs of the Program, resulted in great

²¹Order No. 30974 at 30.

²²See U.S. Energy Information Administration website at: <https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=RWTC&f=D>; and Hawaii Department of Business, Economic Development & Tourism website at: <http://dbedt.hawaii.gov/economic/energy-trends-2/> (click on "Monthly Energy Data: Historical data from January 2006 to March 2016" hyperlink).

²³See U.S. Energy Information Administration website at: <https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=RWTC&f=D>; and Hawaii Department of Business, Economic Development & Tourism website at: <http://dbedt.hawaii.gov/economic/energy-trends-2/> (click on "Monthly Energy Data: Historical data from January 2006 to March 2016" hyperlink).

difficulty in ensuring that savings for Program participants would be "beyond bill neutral."

C.

GEMS and the Hawaii Green Infrastructure Authority

In its application for approval of the Green Energy Market Securitization Program ("GEMS Program"), DBEDT²⁴ requested approval to use the on-bill repayment mechanism under development by the commission in this Docket.²⁵ In Decision and Order No. 32318, issued on September 30, 2014, the commission approved DBEDT's request to use the commission-developed on-bill repayment mechanism for the GEMS Program, upon finalization of the repayment mechanism.²⁶

The on-bill repayment mechanism was to be developed in this docket with the expertise and cooperation of the Finance Program Administrator, who was responsible for the "calculation of the On-Bill Obligation and monthly Program Charge,

²⁴Pursuant to HRS § 196-63, DBEDT acted on behalf of the Hawaii Green Infrastructure Authority ("HGIA") until the latter was duly constituted. HGIA is the entity responsible for effectuating the GEMS Program.

²⁵See Docket No. 2014-0135, "Application of Department of Business, Economic Development, and Tourism; Verification; Exhibits; and Certificate of Service," filed on June 6, 2014, at 29-31.

²⁶See Docket No. 2014-0135, "Decision and Order No. 32318," filed September 30, 2014, at 68.

servicing of the monthly Program Charge, handling transferability and end of term issues, and customer inquiry referrals regarding the monthly Program Charges"²⁷ However, as discussed above, the initial Finance Program Administrator decided not to renew their original contract with the Commission. Coupled with the aforementioned difficulty of securing private investors and the drastic change in certain market conditions, this resulted in an unfinished on-bill repayment mechanism. Perhaps more importantly, it is not clear that the on-bill repayment mechanism, as designed, would be useful given current market conditions. As such, there is currently no finalized on-bill repayment mechanism to be utilized by the GEMS Program.

As stated in Decision and Order No. 32318, the commission still "strongly supports the use of the On-bill Mechanism for the GEMS Program"²⁸ Therefore, the commission directs the HECO Companies and HGIA to work together to develop an on-bill repayment mechanism to be used only by HGIA. The on-bill repayment mechanism does not need to be developed to allow for other "qualified sources of capital," as that term is defined in the Program Manual, to access the mechanism. This new on-bill repayment mechanism will not provide for a

²⁷Final Program Manual at 4.

²⁸Decision and Order No. 32318 at 68.

Finance Program Administrator to calculate or service any aspect of the on-bill charge.

In directing the HECO Companies and HGIA to work together to develop an on-bill repayment mechanism, the commission reiterates its reliance on HGIA's expertise and judgment, as a state agency, "to operate the GEMS Program [and the on-bill repayment mechanism] in the public interest pursuant to the laws of the State of Hawaii."²⁹ As requested by the HGIA, "the securitization of the GEMS Program Bond proceeds is by way of a non-bypassable surcharge on all ratepayers within the HECO Companies' service territories."³⁰ Accordingly, as an instrumentality of the State, the HGIA shall fulfill its fiduciary responsibility over the ratepayer supported bond proceeds by "ensur[ing] that all related funds are managed prudently, and that administrative costs are minimized to the fullest extent possible."³¹

²⁹Decision and Order No. 32318 at 7.

³⁰Decision and Order No. 32318 at 41.

³¹Decision and Order No. 32318 at 38.

II.

Findings and Conclusions

1. HRS § 269-125 directed the commission to investigate an on-bill financing program for electric utility customers to purchase or otherwise acquire a renewable energy system or energy-efficient device through an assessment on the customer's electricity bill. If the commission's investigation determined that such a program was viable, the commission was authorized to establish such.

2. The commission's investigation of the viability of an on-bill financing program was conducted in Docket No. 2011-0186 with the assistance of numerous entities including Harcourt, the Consumer Advocate, DBEDT, HECO Companies, Blue Planet Foundation, Hawaii Energy, Hawaii Renewable Energy Alliance, Hawaii Solar Energy Association, Sierra Club of Hawaii, SolarCity, and Honeywell International, Inc.

3. After almost eighteen months of investigation, it was determined that an on-bill financing program in Hawaii could be viable, contingent upon the details of the on-bill financing program design, including contracting with a Finance Program Administrator, securing low-cost private capital, and ensuring bill neutrality.

4. The commission finds that despite Harcourt's expectation that several types of entities and structures would

submit a response to a RFP to be the Finance Program Administrator, the market has shown very little interest in qualified entities filling such a role.

5. The commission further finds that despite Harcourt's confidence that "there will be significant interest from [] capital sources in supporting the program, with the elements described in this report[,]" the market has shown very little interest in capital sources investing in the Program.³²

6. The commission also finds that changed market conditions since the commission opened Docket No. 2014-0129 to establish and implement the Program (i.e., June of 2014) have made it difficult to ensure savings beyond bill neutrality, which the commission determined to be essential to the viability of the Program.

7. Thus, at this time, the commission finds that current market conditions, which affect critical Program components, including the retention of a replacement Finance Program Administrator, the attraction of low-cost capital, and the requirement that savings exceed bill neutrality, are such that the likelihood of a successful launch of the Program is extremely low.

³²Harcourt Report at 23.

8. Accordingly, consistent with HRS § 269-125, the commission concludes that an on-bill financing program is not viable at the present time.

9. Consequently, the commission suspends its efforts to establish and implement an on-bill financing program.

10. Nevertheless, the commission also intends to ensure that the GEMS Program has every opportunity to deploy its bond proceeds and secure loan repayments that will be used to offset the reduction in public benefits funds collections instituted as a result of the GEMS Program and associated green infrastructure fee.

11. Thus, the commission directs the HECO Companies to work directly with HGIA to design and implement an on-bill repayment mechanism for the exclusive use of HGIA.

12. Prior to implementation, the HECO Companies and HGIA shall submit their on-bill repayment mechanism design to the commission for approval.

III.

Orders

THE COMMISSION ORDERS:

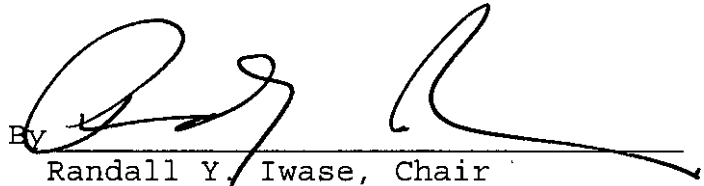
1. The establishment and implementation of the Hawaii Energy Bill Saver Program is hereby suspended.

2. The HECO Companies shall work directly with the HGIA to design and implement an on-bill repayment mechanism for the exclusive use of the HGIA.


3. Prior to implementation of the on-bill repayment mechanism, the HECO Companies and HGIA shall submit their on-bill repayment mechanism design to the commission for approval.

DONE at Honolulu, Hawaii MAY 20 2016.

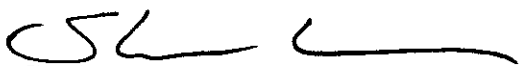
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OF THE STATE OF HAWAII

By 
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By 
Michael E. Champley, Commissioner

By 
Lorraine H. Akiba, Commissioner

APPROVED AS TO FORM:


Shannon Mears
Commission Counsel

2014-0129.ljk

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail,
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Certificate of Service

Page 2

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